

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: February 19, 2003

Division: Growth Management

Bulk Item: Yes ☐ No ☒

Department: Growth Management

AGENDA ITEM WORDING:

Approval of a Resolution approving the Settlement Agreement, Mutual General Release and Transfer of Funds to cover costs in the litigation of Shadek, et al. V. Monroe County.

ITEM BACKGROUND:

In the 1980's, at the behest of the State of Florida, the County undertook certain regulatory action that ultimately resulted in the State purchasing approximately 145 acres in North Key Largo. Subsequent to the purchase, the owners of the property sued the County on the premise that the property was worth more than the amount paid by the State. The State fails to obtain general releases at the time of sale. The cases have proceeded through the federal and state courts with the last action being a determination by the circuit court that the County had some liability. The next phase was the damages and trial. There was a court ordered mediation which resulted in the attached settlement. Although attorneys for the County felt that there was an excellent chance of prevailing upon appeal, the question at hand was the ultimate potential exposure of the County.

PREVIOUS RELEVANT BOCC ACTION:

The issues involved evolved well prior to the seating of this County Commission. The County Commission has pursued the appeals and court cases up to this settlement.

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: \$5.9 million over three payments

BUDGETED: Yes, with the passage of the attached Resolution


COST TO COUNTY: \$5.9 million over three payments

SOURCE OF FUNDS:
Infrastructure Sales Tax and Fund 148

REVENUE PRODUCING: Yes ☐ No ☒ **AMOUNT PER MONTH** ☐ **Year** ☐

APPROVED BY: County Atty ☒ OMB/Purchasing ☒ Risk Management ☒

DIVISION DIRECTOR APPROVAL:


James L. Roberts

DOCUMENTATION: Included ☒ To Follow ☐ Not Required ☐

DISPOSITION: _____

AGENDA ITEM # mf

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Shadek/Harrison Contract #
 Effective Date: 2/19/03
 Expiration Date:

Contract Purpose/Description:

Approval of a Resolution approving the Settlement Agreement, Mutual General Release and Transfer of Funds to cover costs in the litigation of Shadek, et al. V. Monroe County

Contract Manager: Debbie Frederick 4741 Co. Administrator/Stop #1
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 2/19/02 Agenda Deadline:

CONTRACT COSTS

Total Dollar Value of Contract: \$ 5.9 Million Current Year Portion: \$
 Budgeted? Yes ☒ No ☐ Account Codes:
 Grant: \$
 County Match: \$

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ /yr For:
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>2-11-03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>2-11-03</u>
Risk Management	<u> </u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u> </u>
O.M.B./Purchasing	<u> </u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u> </u>
County Attorney	<u> </u>	Yes <input type="checkbox"/> No <input type="checkbox"/>	<u> </u>	<u> </u>

Comments:

AGENDA SUMMARY: *Shadek v. Monroe County* settlement

The long-pending *Shadek* litigation, which began in Federal court in 1992 and was later transferred to State court, has been conditionally¹ settled in mediation. Plaintiffs, owners of the huge "Ocean Forest" tract on North Key Largo, sued Monroe County for the temporary taking of their property during two successive 1980s moratoria. Plaintiffs alleged that the County's Major Development moratorium, which was in effect from February, 1982 until adoption of the State-mandated Comprehensive Plan in September, 1986, followed by nearly 4 years' delay in adopting the Habitat Conservation Plan (required under the 1986 Comprehensive Plan), deprived them of all economic use of their property until they sold the property to State of Florida in 1990.

Because Plaintiffs had sold part of the property (Northerly of the State Road, on the Sound) to the United States in 1985, the Circuit Court dismissed Plaintiffs' takings claim for that part of the Ocean Forest property. When the State purchased the remainder of the property (i.e., the ocean-side part, South of the State Road), the State of Florida neglected to obtain a release from Plaintiffs. That omission enabled Plaintiffs, 2 years after selling the ocean-side parcel to the State for full value, to sue Monroe County for imposing State-mandated restrictions on the property.

After a trial on liability (the amount of damages was deferred for later determination), Circuit Judge Luis Garcia held that the County's moratoria constituted a temporary taking. The County's appeal of that ruling was dismissed as premature, forcing the parties to prepare for jury trial on the damages issue, without the benefit of an appellate court decision on the takings ruling. Both parties retained experts on the damages issue. Plaintiffs' witnesses would testify that the damages sustained as a result of 8 years' deprivation of use, plus nearly 13 years of prejudgment interest on that sum, exceeded fifty million dollars. Although the County's witnesses would have testified that Plaintiffs' damages were far less than claimed, the lowest verdict that could reasonably have been anticipated, adding prejudgment interest, costs and attorney's fees, would have been more than seven million dollars.

Settlement negotiations, culminating in mediation, focused on the risks faced by each party. Plaintiffs knew that the recent US Supreme Court decision in the *Tahoe* case² was unfavorable to their "categorical" takings claim, and would force them (in the eventual appeal) to defend the Circuit Court's liability ruling on the more difficult basis of a traditional "*Penn Central*" taking. In other words, Plaintiffs were acutely aware that there was a significant possibility of losing the case on appeal. Monroe County risked an adverse Judgment in an amount that it could not afford to pay. A successful appeal was not assured, and during the lengthy appellate process (which could go as far as the US Supreme Court) the County's credit status would be impaired by the existence of a Judgment that exceeded its resources. Impairment of credit would jeopardize the County's ability to issue bonds for, e.g., sewers and other capital projects.

¹ Conditioned only on BOCC approval.

² *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 122 S. Ct. 1465 (2002).

As a result of intense mediation efforts by both sides, the County was able to settle its potential \$50 million + exposure for \$5,900,000, payable in three annual installments, without additional interest. The County secured two noteworthy additional benefits. First, the liability order entered by the Circuit Court will be vacated, thereby eliminating any potential that it could be cited as precedent by other claimants. Second, the agreement expressly reserves the County's right to seek reimbursement from the State of Florida, whose mandate to adopt a Comprehensive Plan under Area of Critical State Concern legislation, and whose failure to secure a release when it bought the ocean-side property, exposed the County to this claim.

Monroe County engaged the national land-use law firm of Freilich, Leitner & Carlisle to assist in the defense of the *Shadek* case. The firm has special expertise in the evolving area of temporary takings law, and drafted the US Supreme Court amicus brief of the American Planning Association in the *Tahoe* case. Robert Freilich of that firm recommends that Monroe County approve this settlement, for the reasons expressed above. He has agreed to assist the County in pursuing its reimbursement claim with the State of Florida, and in updating the Comprehensive Plan by improving the County's ability to manage growth and reducing its exposure to liability claims.

Settlement Agreement

Sources of payment

	FY 03	FY 04	FY 05	Total by Source
One Cent Infrastructure Sales Tax Fund ¹	\$1,000,000	\$1,000,000	\$1,000,000	\$3,000,000
General Purpose MSTU-Fund Balance Stabilization	\$600,000	\$0	\$0	\$600,000
General Purpose MSTU-2010 Comp Plan	\$200,000	\$0	\$0	\$200,000
General Purpose MSTU-Contingency	\$700,000	\$0	\$0	\$700,000
<u>General Purpose MSTU-Unbudgeted Fund Balance</u>	<u>\$0</u>	<u>\$1,000,000</u>	<u>\$400,000</u>	<u>\$1,400,000</u>
Subtotal General Purpose MSTU²	\$1,500,000	\$1,000,000	\$400,000	\$2,900,000
Total by year	\$2,500,000	\$2,000,000	\$1,400,000	\$5,900,000

- 1) Use of one cent infrastructure sales tax funds will cause the delay or reduction of some projects in the capital plan.
- 2) Use of General Purpose MSTU funds may have an impact on future millage rates.

RESOLUTION -2003

A RESOLUTION OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS (BOCC) APPROVING THE SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE DATED FEBRUARY 19, 2003 IN THE LITIGATION OF SHADEK, ET AL V. MONROE COUNTY (FLORIDA CIRCUIT COURT CASE NO. 95-20398-CA-05; U.S. DISTRICT COURT CASE NO. 92-10026-CIV-KING; U.S. CIRCUIT COURT OF APPEALS CASE NO. 95-4947) AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AND DELIVER THE SETTLEMENT AGREEMENT AND MUTUAL RELEASE.

WHEREAS, the County is a party in litigation in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida, (Case No. 95-20398-CA-05); in the United States District Court for the Southern District of Florida (Case No. 92-10026-Civ-King); and an appeal in the United States Court of Appeals for the Eleventh Circuit, (Case No. 95-4947); and,

WHEREAS, the Parties to said litigation desire to settle all claims, causes of action, and appeals in accordance with the Settlement Agreement and Mutual General Release dated February 19, 2003.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, FLORIDA THAT:

1. The Settlement Agreement dated February 19, 2003, is hereby approved and the County Administrator is hereby authorized to execute and deliver the Settlement Agreement on behalf of the BOCC.
2. The Mutual General Release dated February 19, 2003, is hereby approved and the County Administrator is hereby authorized to execute and deliver the Mutual General Release on behalf of the BOCC.
3. The BOCC approves the transfers of amounts previously set-up in the Monroe County budget for fiscal year 2003 for the purposes of this Resolution, as set forth in the attached Resolution.

PASSED AND ADOPTED by the Board of County Commissioners, Monroe County, Florida at a regular meeting of said Board held on the 19th day of February, 2003.

Mayor Dixie Spehar
 Mayor Pro Tem Murray Nelson
 Commissioner Charles McCoy
 Commissioner George Neugent
 Commissioner David Rice

(SEAL)
 Attest: Danny L. Kolhage, Clerk

**BOARD OF COUNTY COMMISSIONERS
 OF MONROE COUNTY, FLORIDA**

By: _____
 Deputy Clerk

By: _____
 Dixie Spehar, Mayor/Chairperson

A RESOLUTION CONCERNING THE TRANSFER OF FUNDS

WHEREAS, it is necessary for the Board of County Commissioners of Monroe County, Florida, to make budgeted transfers in the Monroe County Budget for the Fiscal Year 2003, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that there shall be transfers of amounts previously set up in the Monroe County Budget for the Fiscal Year 2003 as, hereinafter set forth to and from the following accounts:

Fund #304-One Cent Infrastructure Sales Tax

From: 304-5900-85532-590990	Other Uses
Cost Center # 85532 – Reserves 304	
For the Amount: \$1,000,000.00	
To: 304-5150-51002-530490	Miscellaneous
Cost Center #51002 - Settlement Agreement 304	

Fund #148 – General Purpose MSTU

From: 148-5900-85525-590990	Other Uses
Cost Center # 85525 – Reserves 148	
For the Amount: \$700,000.00	
To: 148-5150-51003-530490	Miscellaneous
Cost Center #51003-Settlement Agreement 148	
From: 148-5150 -51001-560640	Capital Outlay - Equipment
Cost Center # 51001 – Fund Balance Stabilization	
For the Amount: \$600,000.00	
To: 148-5150-51003-530490	Miscellaneous
Cost Center #51003 - Settlement Agreement 148	
From: 148-5150-51000-530340	Contractual Services
Cost Center # 51000-2010 Comp Plan	
For the Amount: \$200,000.00	
To: 148-5150-51003-530490	Miscellaneous
Cost Center #51003 - Settlement Agreement 148	

BE IT FURTHER RESOLVED BY SAID BOARD, that the Clerk of said Board, upon receipt of the above, is hereby authorized and directed to make the necessary changes of said items, as set forth above.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 19th day of February AD 2003.

Mayor Spehar	_____
Mayor Pro Tem Nelson	_____
Commissioner McCoy	_____
Commissioner Neugent	_____
Commissioner Rice	_____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor/Chairman

(Seal)

Attest: DANNY L. KOLHAGE, Clerk

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this 19th day of February, 2003, by and between **Katherine F. Shadek**, individually, on behalf of and as the Personal Representative of **Arthur J. Shadek**, or in any capacity whatsoever, and **Joseph R. Harrison, III**, individually, and as Trustee of the Testamentary Trusts of **Joseph R. Harrison, Jr.**, or in any capacity whatsoever, for themselves, their predecessors, successors, respective heirs, executors, administrators, legatees, assigns, directors, officers, agents, employees, and all natural persons, corporations, firms, organizations, partnerships, associations, and entities claiming by or through them (hereinafter referred to as "**Shadek/Harrison**"), and **Monroe County** and the **Monroe County Board of County Commissioners**, for themselves, their elected and appointed officials, predecessors, successors, directors, officers, agents, employees, and all natural persons, corporations, firms, boards, departments, commissions, councils, committees, and entities claiming by or through them (hereinafter referred to as the "**County**"), provides for the settlement of all claims, appeals, and causes of action that they have, have had, or may have against each other as of February 19, 2003, including, but not limited to, any liability and all claims, suits, proceedings, and causes of action arising out of the purchase, ownership, use, regulation, and/or disposition of the real property commonly described as "**Ocean Forest**," more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference.

RECITALS

WHEREAS, **Shadek/Harrison** and the **County** (the "**Parties**") are parties to litigation now pending in the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida, styled *Katherine F. Shadek and Joseph R. Harrison, III, et al. v. Monroe County Board of County Commissioners*, Case No. 95-20398-CA-05; litigation in the United States District Court for the Southern District of Florida, currently on appeal, styled *Arthur J. Shadek; Katherine F.*

Shadek; and Joseph R. Harrison, III, as Personal Representative of Joseph R. Harrison, Jr., v. Monroe County Board of County Commissioners; Case No. 92-10026-Civ-King; and an appeal now pending in the United States Court of Appeals for the Eleventh Circuit, styled Arthur J. Shadek; Katherine F. Shadek; and Joseph R. Harrison, III, as Personal Representative of Joseph R. Harrison, Jr., v. Monroe County Board of County Commissioners; Case No. 95-4947.

WHEREAS, the Parties, having proceeded successfully through Court-ordered mediation, desire to settle and compromise any and all judgments, liabilities, causes of actions, suits, as well as any attorney's fees, costs, and expenses (including, but not limited to, fees, costs, and claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1988) that each party has, has had, or may have against each other as of February 19, 2003, the effective date of this Settlement Agreement (hereinafter referred to as the "Agreement").

NOW, THEREFORE, for and in consideration of the sum of \$10.00, the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each Party, Shadek/Harrison and the County hereby agree as follows:

1. **Incorporation of Recitals.** The above Recitals are incorporated into and made a part of this Agreement.
2. **Payment by the County.** The County will pay Shadek/Harrison the sum of Five Million Nine Hundred Thousand Dollars (\$5,900,000.00) in three (3) installments as follows:
 - a. The sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) shall be paid on or before March 14, 2003;
 - b. The sum of Two Million Dollars (\$2,000,000.00) shall be paid on or before February 16, 2004; and

c. The sum of One Million Four Hundred Thousand Dollars (\$1,400,000.00)

shall be paid on or before February 16, 2005.

Payments by the County shall be made by wire transfer to:

Gibraltar Bank
200 South Biscayne Boulevard
Suite 2850
Miami, Florida 33131
Routing No: 267090455
Credit to Ocean Forest
Account No. 30076714

In the event the orders of dismissal referred to in paragraph 13 have not been entered by March 14, 2003, Douglas M. Halsey, attorney for Shadek/Harrison, will hold the County's payment in escrow until the orders have been entered.

3. Release of claims and satisfaction.

a. The Parties have executed and delivered the Mutual General Release, which is attached hereto as Exhibit "B."

b. If Shadek/Harrison, or any attorney or other party on the behalf of Shadek/Harrison, brings judicial or administrative proceedings against the County at any time after the date of the execution of this Agreement, which proceedings relate in any manner to the purchase, ownership, use, regulation, or disposition of the real property commonly described as "Ocean Forest," more particularly described in Exhibit "A," in addition to any other appropriate judicial remedy or sanction otherwise available to the County, the County shall be released from any and all obligations to make payments as set forth in paragraph 2 above. Within five (5) days of initiating any such proceeding as set forth in this paragraph, Shadek/Harrison will pay to the County monies equal in amount to any already paid by the County pursuant to paragraph 2, with interest accruing since the date of original payment by the County.

c. If Shadek/Harrison or the County initiates any proceedings of any kind or nature against the State of Florida or the United States (including any board, agency, office, department, officer, agent, or employee created or authorized by the State or the United States) at any time after the date of execution of this Agreement, which proceeding relates in any manner to the purchase, ownership, use, regulation, or disposition of the real property commonly described as "Ocean Forest," more particularly described in Exhibit "A," in addition to any other appropriate judicial remedy or sanction otherwise available:

- (1) In the case of Shadek/Harrison initiating proceedings against the State of Florida or the United States: (a) the County shall be released from any and all obligations to make payments as set forth in paragraph 2 above; (b) within five (5) days of filing any such proceeding as set forth in this paragraph, Shadek/Harrison will pay to the County monies equal in amount to any already paid by the County pursuant to paragraph 2, with interest from the date of payment; and (c) Shadek/Harrison will indemnify, defend, and hold the County harmless from any third-party or contribution claim which the State of Florida or the United States may bring against the County in any such proceeding.
- (2) In the case of the County initiating proceedings against the State of Florida or the United States, the County will indemnify, defend, and hold Shadek/Harrison harmless from any third-party or contribution claim which the State of Florida or the United States may bring against Shadek/Harrison in any such proceeding.

4. Voluntary dismissal with prejudice. Within fifteen (15) days after the execution of this Agreement, the Parties shall jointly file:

a. The "Notice of Settlement and Joint Motion for Dismissal With Prejudice, Vacation of Liability Order, and to Retain Jurisdiction to Enforce Settlement Agreement," attached hereto as Exhibit "C." The Parties shall simultaneously submit to the Honorable Luis Garcia for execution and filing the proposed "Order Dismissing With Prejudice, Vacating Order, And Retaining Jurisdiction To Enforce Settlement Agreement," attached as Exhibit "D."

- b. The "Joint Motion For Dismissal With Prejudice," attached as Exhibit

"E."

The Parties shall take any additional actions that may be necessary to effectuate the dismissal, with prejudice, of the lawsuits and appeals listed in the Recitals of this Settlement Agreement.

5. **Court order setting aside and vacating liability order.** The Parties acknowledge that a material condition of the execution of this Agreement is the vacation of the Circuit Court's Findings of Fact, Conclusions of Law, and Order dated July 17, 2001.

6. **Right to pursue State reimbursement.** Nothing in this Agreement or the Mutual General Release shall limit the right of the County to seek reimbursement from the State of Florida based on the principal role of the State of Florida in the adoption of the County regulations and policies that gave rise to the claims and causes of action set forth in the above-listed litigation and appeal, and the purchase of the Ocean Forest property from Shadek/Harrison on May 15, 1990 without securing a general release for the County.

7. **Agreement does not constitute admission of liability.** The Parties acknowledge and agree that neither the fact of this Settlement Agreement, the Mutual General Release attached as Exhibit "B," nor the exchange of consideration for this Agreement and Mutual General Release is or shall be construed as an admission of any liability by the County, the County expressly denying any and all liability alleged in the above-listed litigation and appeal. The Parties further acknowledge that this Agreement is entered into for the sole purpose of settling the above-listed litigation and appeal, and all other claims, fees, and expenses regarding the purchase, ownership, use, regulation, or disposition of the property known as "Ocean Forest," more particularly described in Exhibit "A."

FEB-04-03 15:22 FROM: HONORABLE COUNTY CLERK OFFICE TO: JUDGE J. GARCIA

8. **Mutual agreements and understandings.** The Parties hereby acknowledge that the following mutual agreements and understandings constitute material inducements to the execution of this Agreement:

a. that all above-listed litigation be dismissed with prejudice by the Court with lawful jurisdiction over the case;

b. that Shadek/Harrison, or any party representing Shadek/Harrison, is expressly precluded from any further liability, claim, or cause of action against the County that they have, have had, or may have as of February 19, 2003, including, but not limited to, any claim for costs, expenses, and/or attorney's fees (including, but not limited to, any claim under 42 U.S.C. § 1988), that are in any way or manner related to Ocean Forest, as described in Exhibit "A;"

c. that neither this Agreement, the Mutual General Release attached hereto as Exhibit "B," the payment of consideration by the County, the "Findings of Fact, Conclusions of Law, and Order" entered by the Honorable Luis Garcia on July 17, 2001, nor the Courts' orders dismissing the above-listed cases and appeal, shall be considered relief on the merits, a remedial action, or a change in position by the County to satisfy the demands of Shadek/Harrison; and

d. that neither Party is to be considered or construed as a "prevailing party" in any of the above-listed litigation or appeal, under any state or federal law, including, but not limited to, 42 U.S.C. § 1988, by the Settlement Agreement or Mutual General Release, both dated February 19, 2003, the payment of consideration by the County, the "Findings of Fact, Conclusions of Law, and Order" entered by the Honorable Luis Garcia on July 17, 2001, and/or the Courts' orders entered to effectuate this Agreement and the Mutual General Release.

9. **Execution of documents.** Shadek/Harrison and the County agree to and shall cooperate with each other in preparing, executing, and delivering any and all documents that are necessary or required to fulfill or effectuate the terms of this Agreement.

10. **Retention of jurisdiction.** The Circuit Court of Monroe County, Florida shall be requested to retain jurisdiction for the sole purpose of enforcing the terms of this Settlement Agreement. This Settlement Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida. In the event the County fails to timely make the first payment required under paragraph 2 hereof, Shadek/Harrison shall give the County five (5) days within which to cure the breach by making the scheduled payment due plus \$1,000 for each day payment is late, after which Shadek/Harrison may seek immediate enforcement of this Agreement by the Circuit Court, pursuant to Rule 1.730(c), Fla.R.Civ.P. In the event the County fails to make in a timely manner the second or third payments required under paragraph 2 hereof, Shadek/Harrison shall serve upon the County Administrator and the County Attorney written Notice of Default by certified mail, return receipt requested, which shall specify that the County has thirty (30) days to cure such default without assessment of any costs, interest, or attorney's fees. If, after thirty (30) days of receipt of a Notice of Default, payment by the County has not been made in the appropriate amount set forth in paragraph 2 above, Shadek/Harrison may seek enforcement of this Agreement by the Circuit Court, pursuant to Rule 1.730(c), Fla.R.Civ.P. In the event that either Party files suit to enforce this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs at trial and at all levels of appeal incurred in enforcing this Settlement Agreement, in addition to interest on any late payment as provided by statute.

11. **No assignment.** The Parties covenant and represent that they have not sold, transferred, or assigned their respective claims in the above-listed litigation or appeal nor their

rights to receive proceeds from the settlement of such claims for the benefit of any creditors or any third Parties.

12. **Authority of signatories.** The signatories represent and warrant that they have full authority to execute this Agreement on behalf of and to bind their respective Parties. This Settlement Agreement may be executed in multiple counterparts.

13. **Dismissals condition precedent.** The Mutual Release attached as Exhibit "B," and the other undertakings and obligations of the Parties set forth herein shall not become effective until all of the following have occurred:

- a. the United States Court of Appeals for the Eleventh Circuit enters an order which dismisses with prejudice Case No. 95-4947; and
- b. the Circuit Court of the Sixteenth Judicial Circuit in and for Monroe County, Florida enters an order in substantially the same form as the Order attached as Exhibit "D" which:
 - (1) dismisses with prejudice Case No. 95-20398-CA-05;
 - (2) voids, vacates, and sets aside the Liability Order entered by the Court on July 17, 2001;
 - (3) retains the Court's jurisdiction for the sole purpose of enforcing the terms of this Agreement; and
 - (4) is otherwise consistent with and effectuates the terms of this Agreement.

The Parties will cooperate in taking all actions necessary to effectuate the foregoing.

14. Notice. Any notices required to be given by one Party to the other, according to the terms hereof, shall be sent to:

FOR SHADEK/HARRISON:

Douglas M. Halsey
White & Case LLP
Suite 4900
Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131-2352
Telephone: (305) 371-2700
Facsimile: (305) 358-5744

and

FOR MONROE COUNTY:

John Richard Collins
Monroe County Attorney
P.O. Box 1026
Key West, Florida 33041
Telephone: (305) 292-3470
Facsimile: (305) 292-3516

with a copy to:

Robert H. Freilich
Freilich, Leitner & Carlisle
1150 One Main Plaza
4435 Main Street
Kansas City, Missouri 64111-1858
Telephone: (816) 561-4414
Facsimile: (816) 561-7931

FEB-04-03 10:23 FROM MONROE COUNTY CLERK OFFICE FAX 000223910 PAGE 3/3

**MONROE COUNTY BOARD
OF COUNTY COMMISSIONERS**

By: _____
James L. Roberts, County Administrator

Date: _____

Katherine F. Shadek, in the
capacities listed above

Witness: _____

Witness: _____

Date: _____

Attest: _____
Danny L. Kohage, County Clerk

Date: _____

Joseph R. Harrison, III, in the
capacities listed above

Witness: _____

Witness: _____

Date: _____

Approved as to form

John Richard Collins, County Attorney

Date: _____

The undersigned, as counsel for Plaintiffs, Shadek/Harrison, hereby acknowledges full and complete satisfaction of attorney's fees and costs in the above-listed litigation, and releases and waives any claim against the County for attorney's fees and costs in the above-listed litigation, under state or federal law, including, but not limited to, 42 U.S.C. § 1988.

WHITE & CASE LLP

Date: _____

By: _____
Douglas M. Halsey

Ocean Forest, according to the Plat thereof:

A subdivision of portions of Sections 9, 10, 15 and 16, Township 60 South, Range 40 East, being more particularly described as follows:

GOVERNMENT LOT 1, excepting therefrom the North 190.3 feet of the South 717.3 feet according to Deed thereof, recorded in Deed Book G43, Pages 263 and 264 of the Public Records of Monroe County, Florida and GOVERNMENT LOT 2 and the E. $\frac{1}{2}$ of the S.E. $\frac{1}{4}$, all in Section 9; the N.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ and the S.W. $\frac{1}{4}$ of the S.W. $\frac{1}{4}$ and GOVERNMENT LOT 4, all in Section 10; the N.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$ and GOVERNMENT LOTS 1 and 2, all in Section 15; that part of Section 16, lying North of a line that is 2103.5 feet Northerly of, as measured at right angles, and parallel to the South line of said Section 16; all in Township 60 South, Range 40 East, lying and being in Key Largo, Monroe County, Florida, less State Road S-905 right-of-way; also less the East $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of said Section 9; and less the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 9; and less the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 9, Township 60 South, Range 40 East.

EXHIBIT A

IN THE CIRCUIT COURT OF THE
SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY,
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 95-20398-CA-05

KATHERINE F. SHADEK; individually and
on behalf of the Personal Representatives of
ARTHUR J. SHADEK; and
JOSEPH R. HARRISON, III as Trustee of the
Testamentary Trusts of JOSEPH R. HARRISON, JR.,

Plaintiffs,

v.

MONROE COUNTY BOARD OF COUNTY
COMMISSIONERS,

Defendant.

**NOTICE OF SETTLEMENT AND
JOINT MOTION FOR DISMISSAL WITH PREJUDICE,
VACATION OF LIABILITY ORDER, AND
TO RETAIN JURISDICTION TO ENFORCE SETTLEMENT AGREEMENT**

Katherine F. Shadek and Joseph R. Harrison, III, et al. and the Monroe County Board of County Commissioners advise the Court that the controversy before the Court has been settled by the parties pursuant to the terms of a Settlement Agreement following mediation of the case. The Parties hereby acknowledge that the following mutual agreements and understandings constitute material inducements to the execution of the Settlement Agreement and Mutual General Release, both dated February 19, 2003:

- a. that this case be dismissed with prejudice;
- b. that Plaintiffs, or any party representing Plaintiffs, are expressly precluded from any further liability, claim or cause of action against the County, including any action for costs, expenses, and/or attorney's fees, under any state or federal law, including, but not